

**CHILD WELFARE AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Aaron Tilton**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends child welfare provisions of the Utah Human Services Code, the Utah Criminal Code, and the Judicial Code.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ describes the rights of a parent in relation to the parent's child;
- ▶ limits the circumstances under which the division may intervene or remove a child from the child's home;
- ▶ provides that a child residing in the same household as an abused child or a neglected child may not be removed from the household as a sibling at risk, unless there is a substantial risk that the child will also be abused or neglected;
- ▶ requires a petitioner to establish the facts in support of a petition to terminate parental rights beyond a reasonable doubt; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



AMENDS:

**62A-4a-101**, as last amended by Chapter 95, Laws of Utah 2005

**62A-4a-201**, as last amended by Chapter 304, Laws of Utah 2005

**78-3a-103**, as last amended by Chapter 95, Laws of Utah 2005

**78-3a-301**, as last amended by Chapter 356, Laws of Utah 2004

**78-3a-406**, as last amended by Chapter 332, Laws of Utah 2003

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **62A-4a-101** is amended to read:

**62A-4a-101. Definitions.**

As used in this chapter:

(1) "Abuse" means:

(a) actual or threatened nonaccidental physical or mental harm;

(b) negligent treatment;

(c) sexual exploitation; or

(d) any sexual abuse.

(2) "Adoption services" means:

(a) placing children for adoption;

(b) subsidizing adoptions under Section 62A-4a-105;

(c) supervising adoption placements until the adoption is finalized by the court;

(d) conducting adoption studies;

(e) preparing adoption reports upon request of the court; and

(f) providing postadoptive placement services, upon request of a family, for the purpose of stabilizing a possible disruptive placement.

(3) "Board" means the Board of Child and Family Services established in accordance with Sections 62A-1-105, 62A-1-107, and 62A-4a-102.

(4) "Child" has the same meaning as "minor," as defined in this section.

(5) "Consumer" means a person who receives services offered by the division in accordance with this chapter.

(6) "Chronic physical abuse" means repeated or patterned physical abuse.

(7) "Chronic neglect" means a repeated or patterned failure or refusal by a parent,

guardian, or custodian to provide necessary care for a minor's safety, morals, or well-being.

(8) "Chronic emotional abuse" means repeated or patterned emotional abuse.

(9) "Custody," with regard to the division, means the custody of a child in the division as of the date of disposition.

(10) "Day-care services" means care of a child for a portion of the day which is less than 24 hours:

(a) in the child's own home by a responsible person; or

(b) outside of the child's home in a:

(i) day-care center;

(ii) family group home; or

(iii) family child care home.

(11) "Dependent child" or "dependency" means a child, or the condition of a child, who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

(12) "Director" means the director of the Division of Child and Family Services.

(13) "Division" means the Division of Child and Family Services.

(14) (a) "Domestic violence services" means:

(i) temporary shelter, treatment, and related services to persons who are victims of abuse and their dependent children; and

(ii) treatment services for domestic violence perpetrators.

(b) As used in this Subsection (14):

(i) "abuse" means the same as that term is defined in Subsection 30-6-1(1); and

(ii) "domestic violence perpetrator" means a person who is alleged to have committed, has been convicted of, or has pled guilty to an act of domestic violence as defined in Subsection 77-36-1(2).

(15) "Homemaking service" means the care of individuals in their domiciles, and help given to individual caretaker relatives to achieve improved household and family management through the services of a trained homemaker.

(16) (a) "Minor" means a person under 18 years of age.

(b) "Minor" may also include a person under 21 years of age for whom the division has been specifically ordered by the juvenile court to provide services.

(17) "Natural parent" means a minor's biological or adoptive parent, and includes a

minor's noncustodial parent.

(18) (a) "Neglect" means:

(i) abandonment of a child, except as provided in Part 8, Safe Relinquishment of a Newborn Child;

(ii) subjecting a child to mistreatment or abuse;

(iii) lack of proper parental care by reason of the fault or habits of the parent, guardian, or custodian;

(iv) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence, education, or medical care, including surgery or psychiatric services when required, or any other care necessary for the child's health, safety, morals, or well-being; or

(v) a child at risk of being neglected or abused because another child in the same home is neglected or abused.

(b) The aspect of neglect relating to education, described in Subsection (18)(a)(iv), means that, after receiving notice that a child has been frequently absent from school without good cause, or that the child has failed to cooperate with school authorities in a reasonable manner, a parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(c) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child, is not guilty of neglect.

(d) (i) Notwithstanding Subsection (18)(a), a health care decision made for a child by the child's parent or guardian does not constitute neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(ii) Nothing in Subsection (18)(d)(i) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion.

(19) "Protective custody," with regard to the division, means the shelter of a child by the division from the time the child is removed from the child's home until the earlier of:

(a) the shelter hearing; or

(b) the child's return home.

(20) "Protective services" means expedited services that are provided:

(a) in response to evidence of neglect, abuse, or dependency of a minor;

(b) to a cohabitant who is neglecting or abusing a child, in order to:

(i) help the cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse; and

(ii) strengthen the cohabitant's ability to provide safe and acceptable care; and

(c) in cases where the child's welfare is endangered:

(i) to bring the situation to the attention of the appropriate juvenile court and law enforcement agency;

(ii) to cause a protective order to be issued for the protection of the minor, when appropriate; and

(iii) to protect the child from the circumstances that endanger the child's welfare including, when appropriate:

(A) removal from the child's home;

(B) placement in substitute care; and

(C) petitioning the court for termination of parental rights.

(21) "Services to unwed parents" means social, educational, and medical services arranged for or provided to unwed parents to help them plan for themselves and the unborn child.

~~[(25)]~~ (22) "Severe emotional abuse" means emotional abuse that causes or threatens to cause serious harm to a minor.

~~[(22)]~~ (23) "Severe neglect" means neglect that causes or threatens to cause serious harm to a minor.

~~[(26)]~~ (24) "Severe physical abuse" means physical abuse that causes or threatens to cause serious harm to a minor.

(25) (a) "Sexual abuse" means:

(i) sexual abuse as defined in Section 62A-4a-402; or

(ii) sexual exploitation of minors as defined in Section 62A-4a-402.

(b) "Sexual abuse" does not include legitimate physical care or conduct engaged in for the purpose of assisting a child with the child's:

(i) hygiene;

(ii) safety;

(iii) training;

(iv) rehabilitation; or

(v) medical needs.

(c) For purposes of Subsection (25)(b), "legitimate" means that the physical care or conduct described in Subsection (25)(b) is not engaged in with the intent to arouse or gratify the sexual desire of any person.

~~[(23)]~~ (26) "Shelter care" means the temporary care of minors in nonsecure facilities.

~~[(24)]~~ (27) "State" means:

(a) a state of the United States;

(b) the District of Columbia;

(c) the Commonwealth of Puerto Rico;

(d) the Virgin Islands;

(e) Guam;

(f) the Commonwealth of the Northern Mariana Islands; or

(g) a territory or possession administered by the United States.

~~[(27)]~~ (28) "State plan" means the written description of the programs for children, youth, and family services administered by the division in accordance with federal law.

~~[(28)]~~ (29) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

~~[(29)]~~ (30) "Substantiated" or "substantiation" means a judicial finding based on a preponderance of the evidence that abuse or neglect occurred. Each allegation made or identified in a given case shall be considered separately in determining whether there should be a finding of substantiated.

~~[(30)]~~ (31) "Substitute care" means:

(a) the placement of a minor in a family home, group care facility, or other placement outside the minor's own home, either at the request of a parent or other responsible relative, or upon court order, when it is determined that continuation of care in the child's own home would be contrary to the child's welfare;

(b) services provided for a child awaiting placement; and

(c) the licensing and supervision of a substitute care facility.

~~[(31)]~~ (32) "Supported" means a finding by the division based on the evidence available at the completion of an investigation that there is a reasonable basis to conclude that

abuse, neglect, or dependency occurred. Each allegation made or identified during the course of the investigation shall be considered separately in determining whether there should be a finding of supported.

~~[(32)]~~ (33) "Temporary custody," with regard to the division, means the custody of a child in the division from the date of the shelter hearing until disposition.

~~[(33)]~~ (34) "Transportation services" means travel assistance given to an individual with escort service, if necessary, to and from community facilities and resources as part of a service plan.

~~[(34)]~~ (35) "Unsubstantiated" means a judicial finding that there is insufficient evidence to conclude that abuse or neglect occurred.

~~[(35)]~~ (36) "Unsupported" means a finding at the completion of an investigation that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a finding of unsupported means also that the division worker did not conclude that the allegation was without merit.

~~[(36)]~~ (37) "Without merit" means a finding at the completion of an investigation by the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

Section 2. Section **62A-4a-201** is amended to read:

**62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of state.**

(1) (a) Under both the United States Constitution and the constitution of this state, a parent possesses a fundamental liberty interest in the care, custody, and management of the parent's children. A fundamentally fair process must be provided to parents if the state moves to challenge or interfere with parental rights. A governmental entity must support any actions or allegations made in opposition to the rights and desires of a parent regarding the parent's children by sufficient evidence to satisfy a parent's constitutional entitlement to heightened protection against government interference with the parent's fundamental rights and liberty interests.

(b) The fundamental liberty interest of a parent concerning the care, custody, and management of the parent's children is recognized, protected, and does not cease to exist simply because a parent may fail to be a model parent or because the parent's child is placed in

the temporary custody of the state. At all times, a parent retains a vital interest in preventing the irretrievable destruction of family life. Prior to an adjudication of unfitness, government action in relation to parents and their children may not exceed the least restrictive means or alternatives available to accomplish a compelling state interest. Until the state proves parental unfitness, the child and the child's parents share a vital interest in preventing erroneous termination of their natural relationship and the state cannot presume that a child and the child's parents are adversaries.

(c) It is in the best interest and welfare of a child to be raised under the care and supervision of the child's natural parents. A child's need for a normal family life in a permanent home, and for positive, nurturing family relationships will usually best be met by the child's natural parents. Additionally, the integrity of the family unit, and the right of parents to conceive and raise their children have found protection in the due process clause of the Fourteenth Amendment to the United States Constitution. The right of a fit, competent parent to raise the parent's child without undue government interference is a fundamental liberty interest that has long been protected by the laws and Constitution of this state and of the United States.

(d) It is the public policy of this state that parents retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of their children.

(e) Subsections (2) through (7) shall be interpreted and applied consistent with this Subsection (1).

(2) It is also the public policy of this state that ~~[children have]~~ a child has the right to protection from abuse and neglect, and that the state retains a compelling interest in investigating, prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78, Chapter 3a, Juvenile Court Act of 1996. Therefore, the state, as parens patriae, has an interest in and responsibility to protect children whose parents abuse them or do not adequately provide for their welfare. There may be circumstances where a parent's conduct or condition is a substantial departure from the norm and the parent is unable or unwilling to render safe and proper parental care and protection. Under those circumstances, the state may take action for the welfare and protection of the parent's children.

(3) When the division intervenes on behalf of an abused, neglected, or dependent child,



it shall take into account the child's need for protection from immediate harm. Throughout [its] the division's involvement, the division shall utilize the least intrusive and least restrictive means available to protect a child, in an effort to ensure that children are brought up in stable, permanent families, rather than in temporary foster placements under the supervision of the state.

(4) (a) When circumstances within the family pose a threat to the child's immediate safety or welfare, the division may:

(i) obtain custody of the child for a planned period; and

(ii) place the child in a safe environment, in accordance with the requirements of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

(b) Subject to Subsection (4)(c), the fact that a child's home is dirty or unkempt does not constitute grounds for the division to intervene or remove a child from the child's home, unless the condition of the home poses a serious threat to a child's safety.

(c) Nothing in Subsection (4)(b) shall be interpreted to limit the division's:

(i) investigation responsibilities; or

(ii) ability to provide voluntary services to a family.

(5) In determining and making "reasonable efforts" with regard to a child, pursuant to the provisions of Section 62A-4a-203, both the division's and the court's paramount concern shall be the child's health, safety, and welfare. The desires of a parent for the parent's child shall be given full and serious consideration by the division and the court.

(6) In cases where actual sexual abuse, abandonment, or serious physical abuse or neglect are established, the state has no duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home, provide reunification services, or to attempt to rehabilitate the offending parent or parents. This Subsection (6) does not exempt the division from providing court-ordered services.

(7) (a) It is the division's obligation, under federal law, to achieve permanency for children who are abused, neglected, or dependent. If the use or continuation of "reasonable efforts," as described in Subsections (5) and (6), is determined to be inconsistent with the permanency plan for a child, then measures shall be taken, in a timely manner, to place the child in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(b) If, because of his conduct or condition, a parent is determined to be unfit or incompetent based on the grounds for termination of parental rights described in Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act, the welfare and best interest of the child is of paramount importance, and shall govern in determining whether that parent's rights should be terminated.

Section 3. Section **78-3a-103** is amended to read:

**78-3a-103. Definitions.**

(1) As used in this chapter:

(a) "Abused child" includes a minor less than 18 years of age who:

(i) has suffered or been threatened with nonaccidental physical or mental harm, negligent treatment, or sexual exploitation; or

(ii) has been the victim of any sexual abuse.

(b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved.

(c) "Adult" means a person 18 years of age or over, except that persons 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall be referred to as minors.

(d) "Board" means the Board of Juvenile Court Judges.

(e) "Child placement agency" means:

(i) a private agency licensed to receive minors for placement or adoption under this code; or

(ii) a private agency receiving minors for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.

(f) "Commit" means to transfer legal custody.

(g) "Court" means the juvenile court.

(h) "Dependent child" includes a minor who is homeless or without proper care through no fault of the minor's parent, guardian, or custodian.

(i) "Deprivation of custody" means transfer of legal custody by the court from a parent or the parents or a previous legal custodian to another person, agency, or institution.

(j) "Detention" means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of minors who require secure custody in physically

307 restricting facilities:

308 (i) pending court disposition or transfer to another jurisdiction; or

309 (ii) while under the continuing jurisdiction of the court.

310 (k) "Division" means the Division of Child and Family Services.

311 (l) "Formal referral" means a written report from a peace officer or other person  
312 informing the court that a minor is or appears to be within the court's jurisdiction and that a  
313 petition may be filed.

314 (m) "Group rehabilitation therapy" means psychological and social counseling of one  
315 or more persons in the group, depending upon the recommendation of the therapist.

316 (n) "Guardianship of the person" includes the authority to consent to marriage, to  
317 enlistment in the armed forces, to major medical, surgical, or psychiatric treatment, and to legal  
318 custody, if legal custody is not vested in another person, agency, or institution.

319 (o) "Habitual truant" is a school-age minor who:

320 (i) has received:

321 (A) more than two truancy citations within one school year from the school in which  
322 the minor is or should be enrolled; and

323 (B) eight absences without a legitimate or valid excuse; or

324 (ii) in defiance of efforts on the part of school authorities as required under Section  
325 53A-11-103, refuses to regularly attend school or any scheduled period of the school day.

326 (p) "Legal custody" means a relationship embodying the following rights and duties:

327 (i) the right to physical custody of the minor;

328 (ii) the right and duty to protect, train, and discipline the minor;

329 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary  
330 medical care;

331 (iv) the right to determine where and with whom the minor shall live; and

332 (v) the right, in an emergency, to authorize surgery or other extraordinary care.

333 (q) (i) "Minor" means a person under the age of 18 years.

334 (ii) "Minor" includes the term "child" as used in other parts of this chapter.

335 (r) "Natural parent" means a minor's biological or adoptive parent, and includes the  
336 minor's noncustodial parent.

337 (s) (i) "Neglected child" means a minor:

(A) whose parent, guardian, or custodian has abandoned the minor, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

(B) whose parent, guardian, or custodian has subjected the minor to mistreatment or abuse;

(C) who lacks proper parental care by reason of the fault or habits of the parent, guardian, or custodian;

(D) whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, education, or medical care, including surgery or psychiatric services when required, or any other care necessary for health, safety, morals, or well-being; or

(E) who is at risk of being a neglected or abused child as defined in this chapter because another minor in the same home is a neglected or abused child as defined in this chapter.

(ii) The aspect of neglect related to education, described in Subsection (1)(s)(i)(D), means that, after receiving notice that a minor has been frequently absent from school without good cause, or that the minor has failed to cooperate with school authorities in a reasonable manner, a parent or guardian fails to make a good faith effort to ensure that the minor receives an appropriate education.

(iii) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a minor, is not guilty of neglect.

(iv) Notwithstanding Subsection (1)(s)(i), a health care decision made for a child by the child's parent or guardian does not constitute neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(v) Nothing in Subsection (1)(s)(iv) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion.

(t) "Nonjudicial adjustment" means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of the minor, the parent, legal guardian or custodian, and the assigned probation officer.

(u) "Probation" means a legal status created by court order following an adjudication on the ground of a violation of law or under Section 78-3a-104, whereby the minor is permitted to remain in the minor's home under prescribed conditions and under supervision by the

probation department or other agency designated by the court, subject to return to the court for violation of any of the conditions prescribed.

(v) "Protective supervision" means a legal status created by court order following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or dependency is provided by the probation department or other agency designated by the court.

(w) (i) "Residual parental rights and duties" means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including:

(A) the responsibility for support;

(B) the right to consent to adoption;

(C) the right to determine the child's religious affiliation; and

(D) the right to reasonable parent-time unless restricted by the court.

(ii) If no guardian has been appointed, "residual parental rights and duties" also include the right to consent to:

(A) marriage;

(B) enlistment; and

(C) major medical, surgical, or psychiatric treatment.

(x) "Secure facility" means any facility operated by or under contract with the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation.

(y) "Shelter" means the temporary care of minors in physically unrestricted facilities pending court disposition or transfer to another jurisdiction.

(z) "State supervision" means a disposition that provides a more intensive level of intervention than standard probation but is less intensive or restrictive than a community placement with the Division of Juvenile Justice Services.

(aa) "Substantiated" ~~[has the same meaning]~~ is as defined in ~~[Subsection]~~ Section 62A-4a-101~~(29)~~.

(bb) "Supported" ~~[has the same meaning]~~ is as defined in ~~[Subsection]~~ Section 62A-4a-101~~(31)~~.

(cc) "Termination of parental rights" means the permanent elimination of all parental

rights and duties, including residual parental rights and duties, by court order.

(dd) "Therapist" means a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody, or any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

(ee) "Unsubstantiated" ~~[has the same meaning]~~ is as defined in ~~[Subsection]~~ Section 62A-4a-101~~[(34)]~~.

(ff) "Without merit" ~~[has the same meaning]~~ is as defined in ~~[Subsection]~~ Section 62A-4a-101~~[(36)]~~.

(2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the Division of Child and Family Services:

(a) "Custody" means the custody of a minor in the Division of Child and Family Services as of the date of disposition.

(b) "Protective custody" means the shelter of a minor by the Division of Child and Family Services from the time the minor is removed from home until the earlier of:

(i) the shelter hearing; or

(ii) the minor's return home.

(c) "Temporary custody" means the custody of a minor in the Division of Child and Family Services from the date of the shelter hearing until disposition.

Section 4. Section **78-3a-301** is amended to read:

**78-3a-301. Court-ordered protective custody of a minor following petition filing -- Grounds.**

(1) After a petition has been filed under Subsection 78-3a-305(1), if the minor who is the subject of the petition is not in the protective custody of the division, a court may order that the minor be removed from the minor's home or otherwise taken into protective custody if the court finds, by a preponderance of the evidence, that any one or more of the following circumstances exist:

(a) there is an imminent danger to the physical health or safety of the minor and the minor's physical health or safety may not be protected without removing the minor from the custody of the minor's parent or guardian;

(b) a parent or guardian engages in or threatens the minor with unreasonable conduct

that causes the minor to suffer emotional damage and there are no reasonable means available by which the minor's emotional health may be protected without removing the minor from the custody of the minor's parent or guardian;

(c) subject to Subsection (2)(c), the minor or another minor residing in the same household has been physically or sexually abused, or is considered to be at substantial risk of being physically or sexually abused, by a parent or guardian, a member of the parent's or guardian's household, or other person known to the parent or guardian;

(d) the parent or guardian is unwilling to have physical custody of the minor;

(e) the minor has been abandoned or left without any provision for the minor's support;

(f) a parent or guardian who has been incarcerated or institutionalized has not arranged or cannot arrange for safe and appropriate care for the minor;

(g) a relative or other adult custodian with whom the minor has been left by the parent or guardian is unwilling or unable to provide care or support for the minor, the whereabouts of the parent or guardian are unknown, and reasonable efforts to locate the parent or guardian have been unsuccessful;

(h) the minor is in immediate need of medical care;

(i) (i) a parent's or guardian's actions, omissions, or habitual action create an environment that poses a threat to the minor's health or safety; or

(ii) a parent's or guardian's action in leaving a minor unattended would reasonably pose a threat to the minor's health or safety;

(j) subject to Subsection (2)(c), the minor or another minor residing in the same household has been neglected;

(k) an infant has been abandoned, as defined in Section 78-3a-313.5;

(l) the parent or guardian, or an adult residing in the same household as the parent or guardian, has been charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation, as defined in Section 58-37d-3, was located in the residence or on the property where the minor resided; or

(m) the minor's welfare is otherwise endangered.

(2) (a) For purposes of Subsection (1)(a), if a minor has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency has occurred involving the same substantiated abuser or under similar circumstance as the

previous abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in the custody of the minor's parent.

(b) For purposes of Subsection (1)(c):

(i) another minor residing in the same household may not be removed from the home unless that minor is considered to be at substantial risk of being physically or sexually abused as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

(ii) if a parent or guardian has received actual notice that physical or sexual abuse by a person known to the parent has occurred, and there is evidence that the parent or guardian failed to protect the minor, after having received the notice, by allowing the minor to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the minor is at substantial risk of being physically or sexually abused.

(c) For purposes of Subsections (1)(c) and (j), a child residing in the same household as an abused child or a neglected child may not be removed from the household, unless there is a substantial risk that the child will also be abused or neglected.

(3) In the absence of one of the factors described in Subsection (1), a court may not remove a minor from the parent's or guardian's custody on the basis of:

(a) educational neglect;

(b) mental illness or poverty of the parent or guardian; or

(c) disability of the parent or guardian, as defined in Subsection ~~[57-21-3]~~ 57-21-2(9).

(4) A minor removed from the custody of the minor's parent or guardian under this section may not be placed or kept in a secure detention facility pending further court proceedings unless the minor is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.

(5) This section does not preclude removal of a minor from the minor's home without a warrant or court order under Section 62A-4a-202.1.

Section 5. Section **78-3a-406** is amended to read:

**78-3a-406. Hearing on Petition to Terminate Parental Rights -- Notice -- Nature of proceedings.**

(1) After a petition for termination of parental rights ~~[has been]~~ is filed[;];

(a) notice of [that] the fact that a petition has been filed and of the time and place of the hearing shall be provided, in accordance with the Utah Rules of Civil Procedure, to;



493            (i) the parents~~[-];~~  
 494            (ii) the guardian~~[-];~~  
 495            (iii) the person or agency having legal custody of the child~~[-];~~ and ~~[to]~~  
 496            (iv) any person acting in loco parentis to the child~~[-];~~  
 497            ~~[(2)]~~ (b) ~~[A]~~ a hearing shall be held specifically on the question of termination of  
 498 parental rights no sooner than ten days after service of summons is complete~~[-A];~~  
 499            (c) a verbatim record of the proceedings shall be taken; and ~~[the parties]~~  
 500            (d) each party shall be advised of ~~[their]~~ the party's right to counsel.  
 501            (2) (a) The summons described in Subsection (1)(b) shall contain a statement to the  
 502 effect that the rights of the parent or parents are proposed to be permanently terminated in the  
 503 proceedings. ~~[That]~~  
 504            (b) The statement described in Subsection (2)(a) may be contained in the summons  
 505 originally issued in the proceeding or in a separate summons subsequently issued.  
 506            (3) (a) ~~[The proceedings]~~ Proceedings to determine whether to terminate parental rights  
 507 are civil in nature and are governed by the Utah Rules of Civil Procedure.  
 508            (b) The court shall in all cases require the petitioner to establish the facts ~~[by clear and~~  
 509 ~~convincing evidence]~~ beyond a reasonable doubt, and shall give full and careful consideration  
 510 to all of the evidence presented with regard to the constitutional rights and claims of the parent  
 511 ~~[and, if]~~.  
 512            (c) If a parent is found, by reason of ~~[his]~~ the parent's conduct or condition, to be unfit  
 513 or incompetent based upon any of the grounds for termination described in this part, the court  
 514 shall then consider the welfare and best interest of the child of paramount importance in  
 515 determining whether termination of parental rights shall be ordered.

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**Legislative Review Note**

**as of 1-5-06 4:35 PM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**